

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

In re S.I., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

S.I.,

Defendant and Appellant.

A125594

(Contra Costa County
Super. Ct. No. J0601776)

Appellant appeals from a final judgment entered after a plea of nolo contendere and dispositional order committing him to the Department of Juvenile Justice (DJJ). Appellant's counsel raises no issues and requests an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441-442.

On September 18, 2008, appellant shot a 16-year-old male twice from behind and robbed the victim of his iPod. The victim, Joseph Perez, had walked through Knoll Park in Antioch, California on his way to a Wal-Mart to purchase cat food and recalled seeing a group of Black males gathering around the park. As Perez neared the walking trail, appellant approached Perez from behind, brandished a small, dark-colored revolver and said, "Give me your shit nigga!" Appellant tried to grab Perez, but Perez managed to escape. As Perez fled, he heard two gunshots fired and fell to the ground, and realized that he had been shot. As Perez lay on the ground, appellant came over and snatched Perez's iPod.

Soon thereafter, Antioch police arrived and discovered Perez lying on the ground next to a set of iPod headphones. Perez told the responding officer that he had been shot. The officer noticed two gunshot wounds on Perez's body—one on the left back region and another on the back of the right upper arm.

Numerous witnesses at the scene told the officers that they heard gunshots fired. Some witnesses said they saw a group of about 10 Black juvenile males near the southern entrance to Knoll Park, next to the walking trail, and that the group scattered when the gunshots were fired. Other witnesses reported that Perez staggered on the walkway trail and eventually collapsed at the edge of the Wal-Mart parking lot. Perez did not recognize any of the Black males in the park but was confident he could identify his attacker. Perez described appellant as a Black male, in his twenties, who had short hair and a goatee.

Later that month, Antioch police investigated a residential burglary. The suspect and later informant, Raymond Hackett told police that appellant was co-responsible for the burglary and that appellant was also the culprit in the Knoll Park shooting and robbery. Hackett said that on September 18, appellant called Hackett's girlfriend to request a ride and that Hackett agreed to meet appellant at Knoll Park. When Hackett arrived at the park, he sensed that appellant's behavior was odd and noticed that appellant had a small black gun, a "snubnose" in his waistband. According to Hackett, appellant admitted to shooting and robbing someone at the park, that he wore a hat at the time, and that he aimed for the victim's head and believed to have killed him. Appellant said he felt disrespected when the victim ran off, which was why he shot him. Hackett also recalled that at some point appellant threw two bullet casings into two different storm drains on Knoll Crest Drive, but the casings were never found. Hackett further revealed that appellant is a member of the "Bout Dat Action" or "BDA," a gang infamous for committing robberies in the Knoll Park area.

Appellant was arrested on an outstanding juvenile warrant the following year. On September 30, 2009, Perez identified appellant as the individual who has the "same look and facial features as the guy that shot me."

Appellant denied any involvement in the Knoll Park incident and claimed to have accepted the no contest plea only because his attorney advised him to do so. According to appellant, he was at Hackett's house on September 18, heard a helicopter at the park, received a call from Hackett about a shooting, and then went to a friend's house. Appellant contended he was accused because Hackett wanted to obtain a "deal" for other crimes he had committed. Appellant also claimed that Perez misidentified him because appellant frequents the park with BDA gang members, but denied being a member of the BDA gang.

On May 8, 2009, appellant pleaded nolo contendere to count three for attempted murder (Pen. Code, §§ 187, 664) and to the personal use of firearm enhancement pursuant to Penal Code section 12022.5, subdivision (a). Before accepting appellant's plea, the court properly advised him of the following: all the constitutional rights he would waive by entry of the plea, including the right to jury trial, his privilege against self-incrimination, and the right to confrontation by, and cross-examination of witnesses; and the maximum penalties and consequences of the plea. The court accepted the plea after finding it was "freely and voluntarily, knowingly and intelligently made." The remaining two counts involving prior charges of residential burglary and resisting an executive officer were dismissed on motion of the prosecutor.

The court considered appellant's age and history, circumstances and gravity of the events, arguments of counsel, and the report and recommendation from the probation department in reaching its disposition.

Appellant's criminal history consists of the following: At the age of 15, appellant was involved in a residential burglary; the court gave appellant a second chance and granted deferred entry of judgment based on an admission to charges of residential burglary and resisting arrest. Soon thereafter, appellant violated his JEM agreement, attempted suicide, and was arrested for being out-of-control at home. On March 26, 2007, appellant tested positive for THC. A few days after, appellant ran away from home in violation of his home supervision agreement and was later sent to live with his father

in Minnesota. In March of the following year, appellant again ran away from home and was reported as a runaway.

At the dispositional hearing appellant's counsel informed the court of appellant's recent good behavior and high academic achievements in juvenile hall. Although, the probation report indicated that in early 2009, appellant was placed on "security risk" status because he approached and punched another student seated in class. However, current reports indicate appellant is the best resident on the unit, follows program rules, and acts as a unit worker.

We conclude that the court's disposition in light of the record was proper and reasonable. The court found appellant's committing offense violated Welfare and Institutions Code section 707, subdivision (b), which also constituted a strike under California's Three Strikes Law. (Pen. Code, § 667 et seq.) Appellant's confinement time was set at 19 years with credit for time served of 282 days.

Additionally, the court ordered a \$300 restitution fine, along with a stay-away order from and restitution to be determined to Perez. Appellant was also prohibited pursuant to Penal Code section 12021, subdivision (e), from owning, possessing or having in his custody or control any firearms until the age of 30.

Appellant's counsel requested placement in a local Youthful Offender Treatment Program (YOTP) instead of the DJJ. The court found that appellant was not suitable for YOTP "[i]n light of the extreme seriousness of this offense and the fact that it did evidence a disregard for human life." The court stated: "[T]he disregard for human life that was exhibited in the commission of this offense was such that this court does find that the minor does represent an extreme danger to the community and that the commitment to the [DJJ] in addition to the programs that the minor will receive the benefit of at [DJJ], that that danger to the community at this time represented by the minor justifies the commitment to [DJJ], again, in addition to the programs that he will be getting the benefit of."

Appellant was also found ineligible for YTOP because the facility is reserved for non-Penal Code section 707, subdivision (b), offenders. The court found that appellant

did not have any special educational needs. There was no error in the sentencing process or the sentence.

Appellant filed a timely appeal on July 21, 2009. The opening *Wende* brief was filed on November 25, 2009.

Our independent review of the record reveals no arguable issues.

The judgment is affirmed.

Lambden, J.

We concur:

Kline, P.J.

Richman, J.